

2024 CV 0467 MCCLUSKEY, DR JAMES VS. WILBERFORCE UNIVERSITY

- Case Type:
- CIVIL
- Case Status:
- OPEN
- File Date:
- 06/12/2024
- Action:
- OTHER CIVIL
- Status Date:
- 06/12/2024
- Case Judge:
- BUCKWALTER, MICHAEL A
- Next Event:
-

Exhibit A

- All Information
- Party
- Service Records
- Docket
- Financial
- Receipt
- Disposition

Party Information

MCCLUSKEY, DR JAMES
- PLAINTIFF

- Address
- 279 WINDING TRAIL
- XENIA, OH 45385

- Party Attorney
- Attorney
 - DEWITT, MICHAEL W
 - Bar Code
 - 0066896

[More Party Information](#)

WILBERFORCE UNIVERSITY
- DEFENDANT

- Address
- 1055 N BICKETT RD
- WILBERFORCE, OH 45384




Party Attorney



[More Party Information](#)

Service Records

Issue Date	Party Served	Tracking Number	Service Method	Status	Service Date
06/12/2024	WILBERFORCE UNIVERSITY 1055 N BICKETT RD WILBERFORCE, OH 45384	9590926699042227898000	CERTIFIED MAILER	SUCCESSFUL	06/17/2024

Docket Information

Date	Description	Docket Text	Image Avail.
06/12/2024	COMPLAINT FILED	COMPLAINT FILED Applies To: DEWITT, MICHAEL W (Attorney) on behalf of MCCLUSKEY, DR JAMES (PLAINTIFF)	 Image
06/12/2024	CIVIL FILING FEE	CIVIL FILING FEE Receipt: 407449 Date: 06/12/2024	
06/12/2024	CIVIL CASE INFORMATION SHEET FILED	CIVIL CASE INFORMATION SHEET FILED -- PRAYER AMOUNT \$ Applies To: DEWITT, MICHAEL W (Attorney) on behalf of MCCLUSKEY, DR JAMES (PLAINTIFF)	 Image
06/12/2024	INSTRUCTIONS FOR SERVICE FILED;	INSTRUCTIONS FOR SERVICE FILED;	 Image

<u>Date</u>	<u>Description</u>	<u>Docket Text</u>	<u>Image Avail.</u>
		Applies To: DEWITT, MICHAEL W (Attorney) on behalf of MCCLUSKEY, DR JAMES (PLAINTIFF)	
06/12/2024	SUMMONS FEE	SUMMONS FEE (n) NOTICE CV SUMMONS ON COMPLAINT Sent On: 06/12/2024 15:10:28	 Image
06/12/2024	CHARGE FOR CERTIFIED MAIL	CHARGE FOR CERTIFIED MAIL Issue Date: 06/12/2024 Service: CVS - CV SUMMONS ON COMPLAINT Method: CERTIFIED MAILER Cost Per: 10.0000 WILBERFORCE UNIVERSITY DEFAULT ADDRESS 1055 N BICKETT RD WILBERFORCE, OH 45384 Tracking Number: 9590926699042227898000	
06/20/2024	SUCCESSFUL SERVICE	SUCCESSFUL SERVICE Method : CERTIFIED MAILER Issued : 06/12/2024 Service : CVS - CV SUMMONS ON COMPLAINT Served : 06/17/2024 Return : 06/20/2024 on : WILBERFORCE UNIVERSITY Signed By : MICHEL BREWER Reason : SUCCESSFUL Comment : Tracking #: 9590926699042227898000	 Image

Financial Summary

<u>Cost Type</u>	<u>Amount Owed</u>	<u>Amount Paid</u>	<u>Amount Adjusted</u>	<u>Amount Outstanding</u>
COST	\$263.00	\$250.00	\$0.00	\$13.00
	\$263.00	\$250.00	\$0.00	\$13.00

• Money on Deposit with the Court

<u>Account</u>	<u>Applied Amount</u>
DEPOSITS	\$0.00
	\$0.00

Receipts

<u>Receipt Number</u>	<u>Receipt Date</u>	<u>Received From</u>	<u>Receipt Location</u>	<u>Payment Amount</u>
407449	06/12/2024	DEWITT LAW LLC		\$250.00
				\$250.00

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
UNDISPOSED		BUCKWALTER, MICHAEL A

JURISDICTION AND VENUE

6. This Court has jurisdiction in this matter because the amount in controversy is greater than \$15,000.

7. Venue is proper in this Court because all of the acts and occurrences alleged herein took place in and around Greene County.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Plaintiff timely filed a charge of discrimination with the Ohio Civil Rights Commission ("OCRC").

9. On or about May 16, 2024, OCRC notified Plaintiff that it had issued him a Right to Sue letter. (Exhibit 1).

10. Plaintiff has timely filed this action and has complied with all administrative prerequisites to bring this lawsuit.

FACTS COMMON TO ALL CLAIMS

11. Dr. McCluskey is over 40 and was wrongfully terminated from by Wilberforce on September 27, 2023.

12. At the time of his termination, he had been a tenured Associate Professor of Mass Media Communications in the College of Arts and Sciences at Wilberforce for over 16 years.

13. Because he was a tenured professor, he could only be removed from his position for just cause or under certain extraordinary circumstances not present here.

14. Upon information and belief, Wilberforce is now, and has been for some time, facing serious financial issues and in addition, in late 2023, was put on notice by the Higher Learning Commission, a college accreditation body, that it was at risk of not meeting certain criteria to remain accredited.

15. Just prior to Dr. McCluskey's termination, Wilberforce hired a new president, Dr. Vann Newkirk, Sr. and a new provost and vice president of academic affairs, Dr. Brandon A. Owens, Sr.

16. Upon information and belief, since Wilberforce hired Newkirk and Owens, they have sought to remove Wilberforce's tenured professors, most likely as an alleged cost-saving measure, by manufacturing dubious claims to use as "cause" under the terms of the tenure contracts between it and its tenured professors.

17. In Dr. McClusey's case, he was alleged to have shown a pornographic film in his class and have had a tab open on his computer to a pornographic website during a class session being held via Zoom, both of which would have allegedly violated several university policies.

18. He was informed of this decision in a letter from Owens, dated September 27, 2023. (Exhibit 2).

19. Despite Owens's claims in the letter however, there is no evidence that Dr. McCluskey either showed a pornographic video to the class or that there was a tab to a pornographic website open on his computer during the class.

20. The contract between Wilberforce and the Wilberforce University Faculty Association ("WUFA") permits a tenured faculty member to appeal a termination decision to the Wilberforce University Promotion and Tenure Committee, which then forms an ad hoc committee of tenured faculty members to hear the appeal.

21. Under the terms of the contract, while the ad hoc committee can make recommendations based on its findings, the president of Wilberforce, Dr. Newkirk, has sole authority to make the final determination.

22. Interestingly, while the WUFA rules require that the ad hoc committee consist of five tenured faculty members, at the time of Dr. McCluskey's appeal, there were not enough tenured faculty at Wilberforce to have more than four tenured faculty members on the ad hoc committee. (Exhibit 3).

23. On November 2, 2023, a hearing was held before the ad hoc committee and both Wilberforce and Dr. McCluskey presented evidence and testimony, including recordings of all of Dr. McCluskey's classes from the fall 2023 academic term up to that point in the school year.

24. In a letter dated November 9, 2023, the ad hoc committee presented its findings to Dr. Newkirk and unanimously determined that the university produced no evidence that Dr. McCluskey was either viewing or showing pornography to his class at any time and that he did not engage in behavior that was deemed detrimental or disruptive to the university community or prohibited by law. (Exhibit 4).

25. It then recommended that Dr. McCluskey not be terminated from his employment at Wilberforce.

26. Despite there being absolutely no evidence of any misconduct whatsoever, let alone conduct that constituted just cause for termination, Dr. Newkirk ignored the evidence and the ad hoc committee's recommendation and upheld the termination. (Exhibit 5).

27. Upon information and belief, the classes that Dr. McCluskey would have normally taught at Wilberforce are being taught by non-tenured instructors who are substantially younger than Dr. McCluskey.

28. Based on the above, it is clear that Wilberforce intentionally discriminated against Dr. McCluskey based on his age, in violation of Ohio law and that any claim that he was terminated for cause is pretextual.

29. In addition, because Dr. McCluskey was a tenured professor and could only be terminated with just cause, Wilberforce's termination of him without just cause breached that contract.

30. Wilberforce's conduct, as described above, has caused Dr. McCluskey to suffer damages in an amount to be determined at trial.

CLAIMS FOR RELIEF

COUNT I
AGE DISCRIMINATION UNDER ORC CHAPTER 4112

31. All preceding paragraphs are incorporated by reference as if fully restated in this paragraph.

32. Dr. McCluskey was an "employee" as that term is defined in R.C. 4112.

33. Wilberforce is an "employer" as that term is defined in R.C. 4112.

34. As noted previously, Dr. McCluskey is over 40.

35. Because Dr. McCluskey is over 40, he is a member of a protected class under R.C. 4112.

36. At the time he was terminated, he was physically able to perform his duties and otherwise met the requirements of his job and laws pertaining to the relationship between employer and employee, that is, he was qualified for his position.

37. Dr. McCluskey was subjected to the conduct alleged above and suffered an adverse employment action when he was terminated by Wilberforce in violation of R.C. 4112.

38. Consistent with R.C. 4112, Dr. McCluskey is entitled to punitive damages because Wilberforce acted with malice.

39. For its violations of R.C. 4112, Wilberforce is liable to Dr. McCluskey for lost pay and benefits, compensatory and punitive damages, and attorney fees and costs, in an amount to be determined at trial, plus the equitable remedy of front pay.

COUNT II
BREACH OF CONTRACT

40. Plaintiff incorporates by reference all of the allegations set forth above, as if fully set forth herein.

41. As a tenured professor, there was a valid employment contract between Dr. McCluskey and Wilberforce, supported by valuable consideration.

42. That contract only permitted Wilberforce to terminate Dr. McCluskey for cause.

43. Wilberforce terminated Dr. McCluskey without cause, and when, on appeal, the ad hoc committee determined there was no cause, Dr. Newkirk ignored both the evidence submitted at the hearing and the ad hoc committee's recommendation and terminated Dr. McCluskey.

44. That termination breached the terms of the contract.

45. That breach caused Dr. McCluskey to sustain damages in an amount to be proven at trial.

PRAYER FOR RELIEF

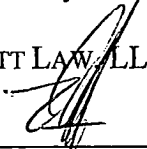
WHEREFORE, Dr. McCluskey demands the following relief:

- A. Front pay in an amount to be determined;
- B. Economic compensatory damages in an amount to be determined at trial;
- C. Non-economic compensatory damages in an amount to be determined at trial;
- D. Liquidated, treble, punitive, or other exemplary damages in an amount to be determined at trial;
- E. Reasonable attorneys' fees incurred in pursuing the claims against Defendant;

- F. All costs and expenses incurred in pursuing the claims against Defendant;
- G. Pre- and post-judgment interest; and
- H. All other legal and equitable relief this Court and/or a jury determines is appropriate.

Respectfully submitted,

DEWITT LAW, LLC



Michael W. DeWitt (0066896)
4200 Regent Street, Suite 200
Columbus, Ohio 43219
(614) 398-2886
(614) 750-1379 (facsimile)
mdewitt@dewittlawco.com
Attorney for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all claims and issues that are triable.



Michael W. DeWitt (0066896)



OHIO CIVIL RIGHTS COMMISSION

Governor: Mike DeWine

Commissioners: Valerie A. Lemmie, Chair | Lori Barreras | William Patmon, III | Madhu Singh | Charlie Winburn
Executive Director: Angela Phelps-White

Commission Meeting: May 16, 2024

Mailed on: May 16, 2024

James John McCluskey
279 Winding Trl.
Xenia, OH 45385
Jmccluskey959@yahoo.com

Wilberforce University
c/o Anita Jefferson-Gomez
1055 N. Bickett Road
Wilberforce, OH 45384
Ajefferson-gomez@wilberforce.edu

LETTER OF DETERMINATION

James McCluskey v. Wilberforce University
DAYB6(002612)10202023; 22A-2024-01705

EXHIBIT

1

FINDINGS OF FACT:

Charging Party, James John McCluskey, filed a charge of discrimination with the Ohio Civil Rights Commission ("Commission") alleging Respondent(s), Wilberforce University, engaged in unlawful discriminatory practices. All jurisdictional requirements for filing a charge have been met.

Prior to the conclusion of the investigation, Charging Party requested to withdraw the charge to request a Notice of Right to Sue from the Ohio Civil Rights Commission and/or Equal Employment Opportunity Commission.

DECISION:

The Ohio Civil Rights Commission has entered into its record a finding of **WITHDRAWAL OF CHARGE - REQUEST A NOTICE OF RIGHT TO SUE**. The matter is **CLOSED**.

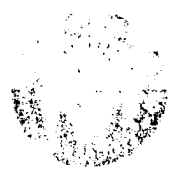
Please refer to the enclosed **NOTICE OF RIGHT TO SUE** for additional information on Charging Party's suit rights.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW:

A determination of the Commission that constitutes a Final Order is subject to judicial review, wherein the court reviews the contents of this letter and determines if there are sufficient factual findings supporting why the Commission did not issue a complaint. A petition for judicial review must be filed in the proper common pleas court within **THIRTY (30) days** of the date the Commission mailed this Final Order. The right to obtain judicial review and the mode and procedure thereof is set forth in Ohio Revised Code § 4112.06.

The judicial review process is not a means to reexamine the investigation or further pursue your allegations through the Commission. You may consult with an attorney for information on available options.

UNITED STATES DISTRICT COURT

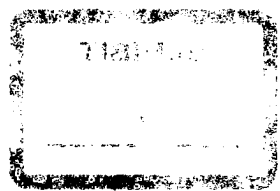


IN RE: [Illegible Case Name]

Case No. [Illegible]

[Illegible text block]

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GREENE COUNTY COMMON PLEAS - GENERAL DIVISION
CIVIL CASE INFORMATION FORM

45 North Detroit Street — Xenia, Ohio 45385
Telephone (937) 562-5290 Facsimile (937) 562-5309

This form must be completed and filed with all Civil Cases

FILED
2024 JUN 12 PM 12:09

AJ WILLIAMS
COMMON PLEAS COURT
GREENE COUNTY, OHIO

PARTIES

2024 CV 0467

Dr. James McCuskey
Plaintiff

Case Number _____

Michael W. DeWitt
Counsel for Plaintiff

Attorney Reg. No. 0066896

-vs-

Jury Demand (X) ☒ Yes ☐ No

Walter Force University
Defendant

Prayer Amount \$ _____

Deposit Amount \$ _____

TYPE OF ACTION

- ☐ Administrative Appeal
- ☐ Appropriation
- ☐ Declaratory Judgment
- ☐ Forcible Entry
- ☐ Habeas Corpus
- ☐ Injunction
- ☐ Medical or Legal Malpractice
- ☐ Foreclosure

- ☒ Other Torts
- ☐ Personal Injury
- ☐ Product Liability
- ☐ Professional Tort
- ☐ Workers Compensation
- ☐ All Others (state type below)
- ☐ Violation of R.C. 1345-Consumer Protection

Re-filing Information

Is this a re-filing of a previous related case? (X) ☐ Yes ☒ No

If Yes, please complete the following:

Case Number _____ Assigned Judge _____

Parties _____ vs. _____

Suits Involving Like Issues and Similar Parties

Are there any other cases pending that arise from the same incident or related parties?

(X) ☐ Yes ☒ No

If Yes, please complete the following:


Case Number _____ Assigned Judge _____

Parties _____ vs. _____

"ORDER FOR SCHEDULING CONFERENCE"

When answers have been filed and served by all named defendants, the plaintiff shall contact the assigned Judge to set a scheduling conference date immediately.

Original - Clerk of Courts
Copy - Counsel



Signature of Attorney or Party Filing Case

IN THE COURT OF COMMON PLEAS, GREENE COUNTY, OHIO

FILED

DR. JAMES McCLUSKEY
279 Winding Trail
Xenia, Ohio 45385

Plaintiff,

v.

WILBERFORCE UNIVERSITY
1055 N Bickett Rd
Wilberforce, OH 45384

Defendant.

:
: **Case No. 2024 CV 0467**

:
: **Judge JUDGE BUCKWALTER**

:
: **COMPLAINT WITH JURY DEMAND**
: **ENDORSED HEREON**

2024 JUN 12 PM 12:02

AJ WILLIAMS
COMMON PLEAS COURT
GREENE COUNTY, OHIO

INSTRUCTIONS FOR SERVICE

To the clerk:

Please serve the Defendant in the within lawsuit by Certified Mail, return receipt requested, as follows:

WILBERFORCE UNIVERSITY
1055 N Bickett Rd
Wilberforce, OH 45384

Respectfully submitted,

DEWITT LAW, LLC

Michael W. DeWitt (0066896)
4200 Regent Street
Suite 200
Columbus, Ohio 43219
(614) 398-2886
(614) 750-1379 (facsimile)
mdewitt@dewittlawco.com
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF GREENE COUNTY, OHIO
SUMMONS

DR JAMES MCCLUSKEY
Plaintiff

Case No. 2024 CV 0467

vs.

SUMMONS ON COMPLAINT

WILBERFORCE UNIVERSITY
Defendant

To the following named defendant:
WILBERFORCE UNIVERSITY
1055 N BICKETT RD
WILBERFORCE, OH 45384

You are hereby summoned that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against you in this court by the Plaintiff(s) named herein.

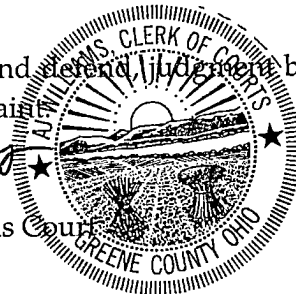
You are required to serve upon the Plaintiff's attorney, or upon the Plaintiff, if he has no attorney of record, a copy of your answer to the complaint within twenty-eight (28) days after service of this summons upon you, exclusive of the day of service. Said answer must be filed with this court within three days after service on Plaintiff's Attorney.

The name and address of the Plaintiff's Attorney is as follows:
MICHAEL W DEWITT
DEWITT LAW LLC
4200 REGENT STREET SUITE 200
COLUMBUS OH 43219
(614)398-2886 MAIN PHONE

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.

Sara Williams
AJ Williams, Clerk

Greene County Common Pleas Court
45 N. Detroit St.
Xenia, OH 45385



Dated: June 12, 2024

Certified Article Number

9414 7266 9904 2227 8980 07

SENDER'S RECORD

SUMMONS1

Return Receipt (Form 3811) Barcode



9590 9266 9904 2227 8980 00

1. Article Addressed to:

2024 CV 0467

WILBERFORCE UNIVERSITY
1055 N BICKETT RD
WILBERFORCE OH 45384

2. Certified Mail (Form 3800) Article Number

9414 7266 9904 2227 8980 07

PS Form 3811, Facsimile, July 2015

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

MICHAEL BRENNER

C. Date of Delivery

07/17/24

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ NoJUL 20 AM 9:24
U.S. MAIL
U.S. POSTAL SERVICE

3. Service Type:

☒ Certified Mail

Reference Information

Domestic Return Receipt

USPS TRACKING #



9590 9266 9904 2227 8980 00



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

**United States
Postal Service®**

• Sender: Please print your name, address and ZIP+4® below •



**GREENE COUNTY CLERK OF COURTS
45 N DETROIT STREET
XENIA OH 45385**

